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United States Senate

COMMITTEE ON
 ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510-6150

February 3, 1997

The Honorable Federico Peña
 Secretary
 Department of Energy
 1000 Independence Avenue SW
 Washington, D.C. 20585

Dear Secretary Peña,

Thank you for the participation by representatives of the Department of Energy at the Committee's September 25, 1997, oversight hearing on Federal energy management activities and the procurement of energy efficiency equipment and related services. The Department is to be commended for its efforts to promote energy efficiency in the Federal Government and for its efforts to streamline the competitive procurement of Energy Savings Performance Contracts (ESPCs). We were pleased to see the Department's recent announcement of the award of its second regional "Super-ESPC" contract.

Significant changes are occurring within the electric utility industry as that industry makes the transition to a more competitive era. However, the extent and timing of these changes remains uncertain. At this time, we believe that it would be prudent for the Department to continue to utilize all of the contracting options it currently has available to it in securing energy efficiency products and services at its facilities, depending on the specific circumstances involved. However, it is not clear to us that the Federal Government and the U.S. taxpayers always receive the same benefits from sole-source procurements of energy efficiency equipment and related services from utilities in those situations where that same equipment and services are available in the competitive marketplace.

As discussed at the hearing, we are concerned that there appears to be a lack of guidance available for field personnel, such as contracting officers and facility directors, to help them decide which procurement avenue to pursue in a given situation. We note that, while the Model Agreement for Energy Conservation and Demand Side Management Services provides a template once a facility has decided to go the facility route, it does not help answer the initial question regarding which procurement process is appropriate.

Consequently, we were pleased to note in the Department of Defense's November 18, 1997, response to questions for the record that the Department of Energy has been working with the Department of Defense on the issuance of guidelines to assist facility personnel in making an informed decision on which contracting approach to take. We would encourage the Department to continue in these efforts. The criteria for determining whether the procurement of these products and services is accomplished through Energy Savings Performance Contracts or through

an agreement with the locally franchised utility should be based upon all likely savings that will result. However, we would strongly suggest that such guidelines clarify that ease of the contracting method is not a sufficient reason alone to choose to enter into a sole-source contract with a utility, as opposed to an equivalent ESPC. In addition, the Department should consider requiring written justification as to why a facility has chosen to enter into a sole-source contract with a utility for energy services that are available in the competitive marketplace, rather than acquire such services through a competitive procurement process, such as the ESPC method.

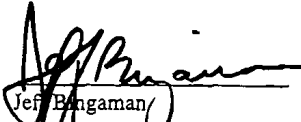
In addition, the Department should ensure that the Federal Government is getting the best contract possible when it is necessary to enter into a sole source contract with a utility. These requirements should include, where practical, the ongoing measurement and verification of savings and a guarantee by the contractor that the energy cost savings will cover all project costs. Moreover, in cases where sole-source contracting is used in a utility area-wide contract, the Department should ensure that individual tasks under the contract are procured on a competitive basis to the maximum extent possible.

We urge the Department to develop this guidance within 90 days. In addition, the Committee would like a report in six months and in twelve months on the progress the Department has made in shifting more toward the use of ESPC's, as was predicted in your testimony and, where sole source procurement is still being employed, an explanation of what benefits are accruing to the government through the utilization of that procurement process.

Sincerely,



Frank H. Murkowski
Chairman



Jeff Bingaman